



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Value Auto Mart, Inc.

Case No: DOT-15-0011

FINAL DECISION

On January 28, 2015, Logan Sarge filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Value Auto Mart, Inc., (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Green Bay Press-Gazette, a newspaper published in Green Bay, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by July 3, 2015. No additional claims were filed. Mr. Sarge's claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on August 19, 2015. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Logan Sarge
2887 South 128th Street
New Berlin, WI 53151

Value Auto Mart, Inc., by

Richard Boelter
Value Auto Mart, Inc.
275 Sumac Drive
Green Bay, WI 54313

Auto Owners Insurance Company
PO Box 30660
Lansing, MI 48909

Findings of Fact

1. Value Auto Mart, Inc., (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 1629 Velp Avenue Green Bay, Wisconsin. The Dealer was placed out of business effective August 31, 2014.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since April 25, 2008 (Bond # 087723-66030116 from Auto Owners Insurance Company).

3. On June 27, 2014, Logan Sarge (Sarge) purchased a 2009 Jeep Wrangler automobile, vehicle identification number 1J4FA2Y169L759621, from the Dealer. According to the purchase contract, Sarge paid \$14,626.37 including tax and registration fees for the vehicle. As a condition of sale, the Dealer agreed to replace the oxygen sensors and catalytic converter, if necessary. This agreement is set forth in writing on the purchase contract. No deadline on this condition is stated.

4. Sarge determined that the oxygen sensors and catalytic converter did need to be replaced and contacted the Dealer. Sarge alleges that he contacted the Dealer several times about having these parts replaced. According to Sarge, the Dealer told him the parts had been ordered. Ultimately, the Dealer went out of business before the agreed upon work was done. Sarge then had the oxygen sensors and catalytic converter replaced at Tim's Alignment & Auto Service in Fond du Lac. Sarge was charged \$1,046.50 for this work. Sarge also had a transmission leak repaired and four ball joints replaced at Phase III Service Center in Green Bay. He was charged \$1,067.64 for this work.

5. Sarge filed a complaint with the Department's —Dealer Section against the Dealer. The complaint is dated November 28, 2014. The investigator for the Department informed Sarge that the Dealer was out of business and provided him with a bond claim form.

6. On January 28, 2015, Sarge filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$2,114.14, the cost of the repairs for the vehicle.

7. The Dealer agreed to replace oxygen sensors and catalytic converter, if necessary, in the vehicle that Sarge purchased. This agreement was put in writing in the purchase contract executed by Sarge and the Dealer. The Dealer's failure to replace the oxygen sensors and catalytic converter when it was determined that the replacement was necessary was a failure to perform a written agreement with a retail customer.

8. The Dealer's failure to perform a written agreement with a retail customer constitutes a violation of Wis. Stat. § 218.0116(1)(cm). Logan Sarge sustained a loss as the result of this violation.

9. Logan Sarge's claim arose on June 27, 2014, the day he purchased the vehicle that is the subject of his claim against the surety bond of the Dealer. Sarge submitted documentation to support a claim in the amount of \$1,046.50, the amount he paid to have the oxygen sensors and catalytic converter replaced. These are repairs the Dealer agreed to make. There is no evidence in the record that the Dealer agreed to replace the ball joints or repair a transmission leak. Accordingly, the portion of the claim for these repairs is not allowable. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company was in effect and is, therefore, a timely claim.

Discussion

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Logan Sarge's claim against the Dealer's surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. The Dealer's failure to replace the oxygen sensors and catalytic converter when it was determined that the replacement was necessary was a failure to perform a written agreement with a retail customer and constitutes a violation of Wis. Stat. § 218.0116(1)(cm). Wis. Stat. §

218.0116(1)(cm) is one of the sections listed in Wis. Admin. Code § Trans 140.21(1)(c)1. Logan Sarge sustained a loss as a result of this violation.

Conclusions of Law

1. The claim of Logan Sarge arose on June 27, 2014, the day he purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on April 25, 2014. The claim arose during the period covered by the surety bond.

2. Logan Sarge filed a claim against the motor vehicle dealer bond of the Dealer on January 28, 2015. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Logan Sarge's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Logan Sarge has supplied documentation to support a claim in the amount of \$1,046.50. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

Order

The claim filed by Logan Sarge against the motor vehicle dealer bond of Value Auto Mart, Inc., is APPROVED in the amount of \$1,046.50. Auto Owners Insurance Company shall pay Logan Sarge this amount for his loss attributable to the actions of Value Auto Mart, Inc..

Dated at Madison, Wisconsin on October 5, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.